

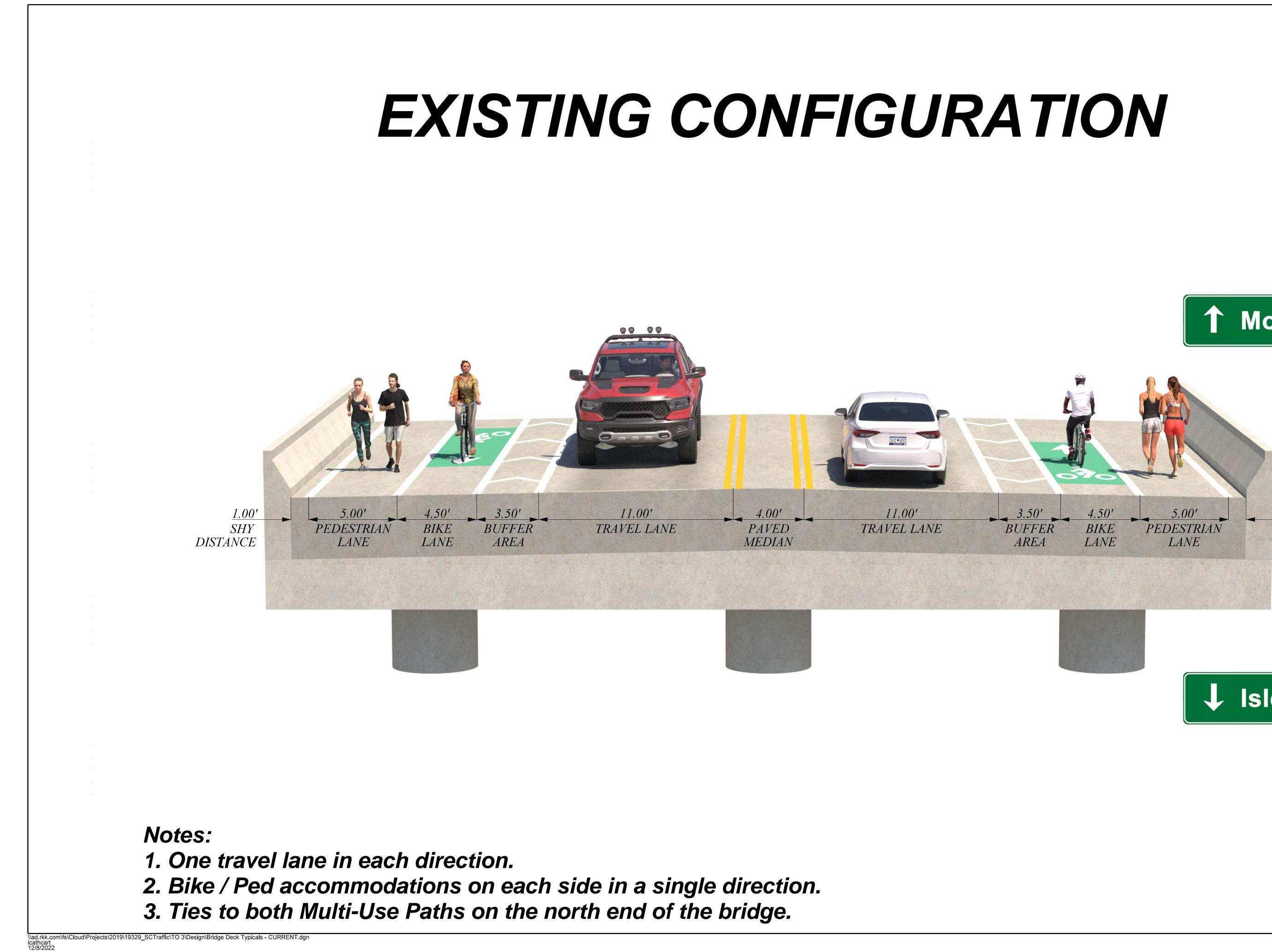
Special City Council 5:00 p.m., Tuesday, December 13, 2022 Council Chambers 1207 Palm Boulevard Isle of Palms, South Carolina

<u>Agenda</u>

1. Call to order and acknowledgement that the press and public have been duly notified of the meeting in accordance with the Freedom of Information Act.

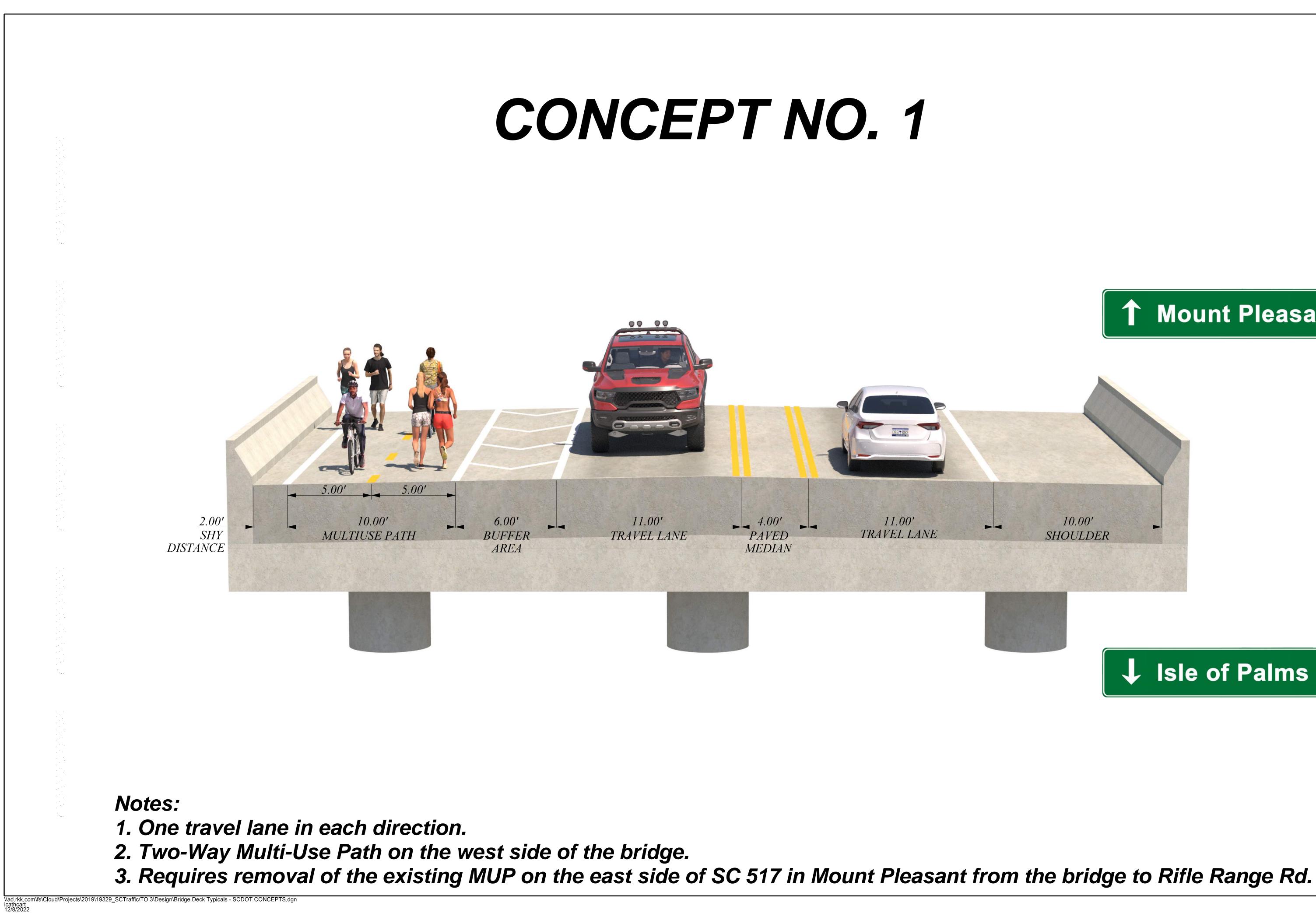
2. Purpose

- a. Presentation from SCDOT of alternative configurations for the IOP Connector
- b. Approval of assignment of private parking lot agreement with Marker 116
- 3. Executive Session If needed.
- 4. Adjournment

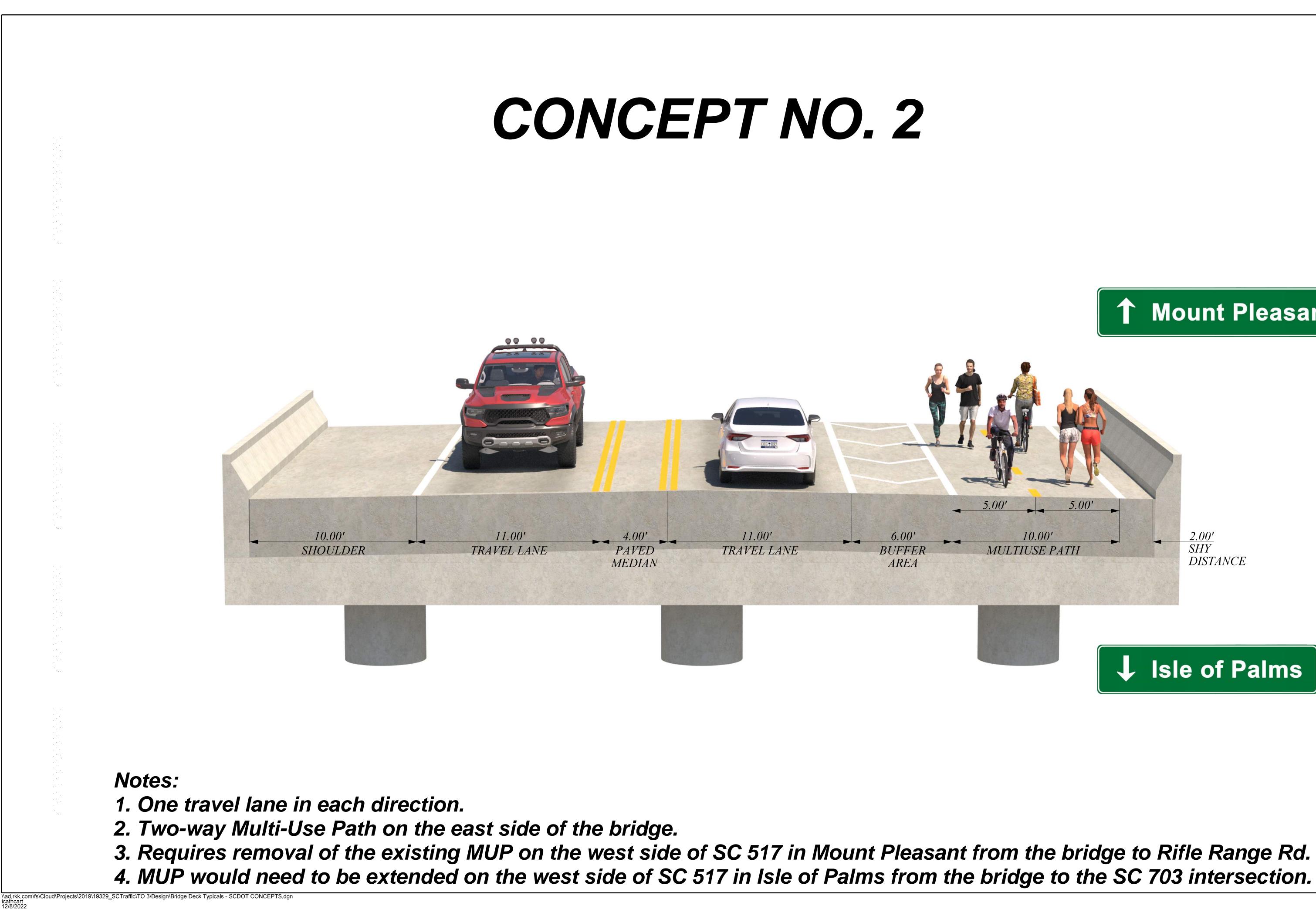


1.00' SHY DISTANCE

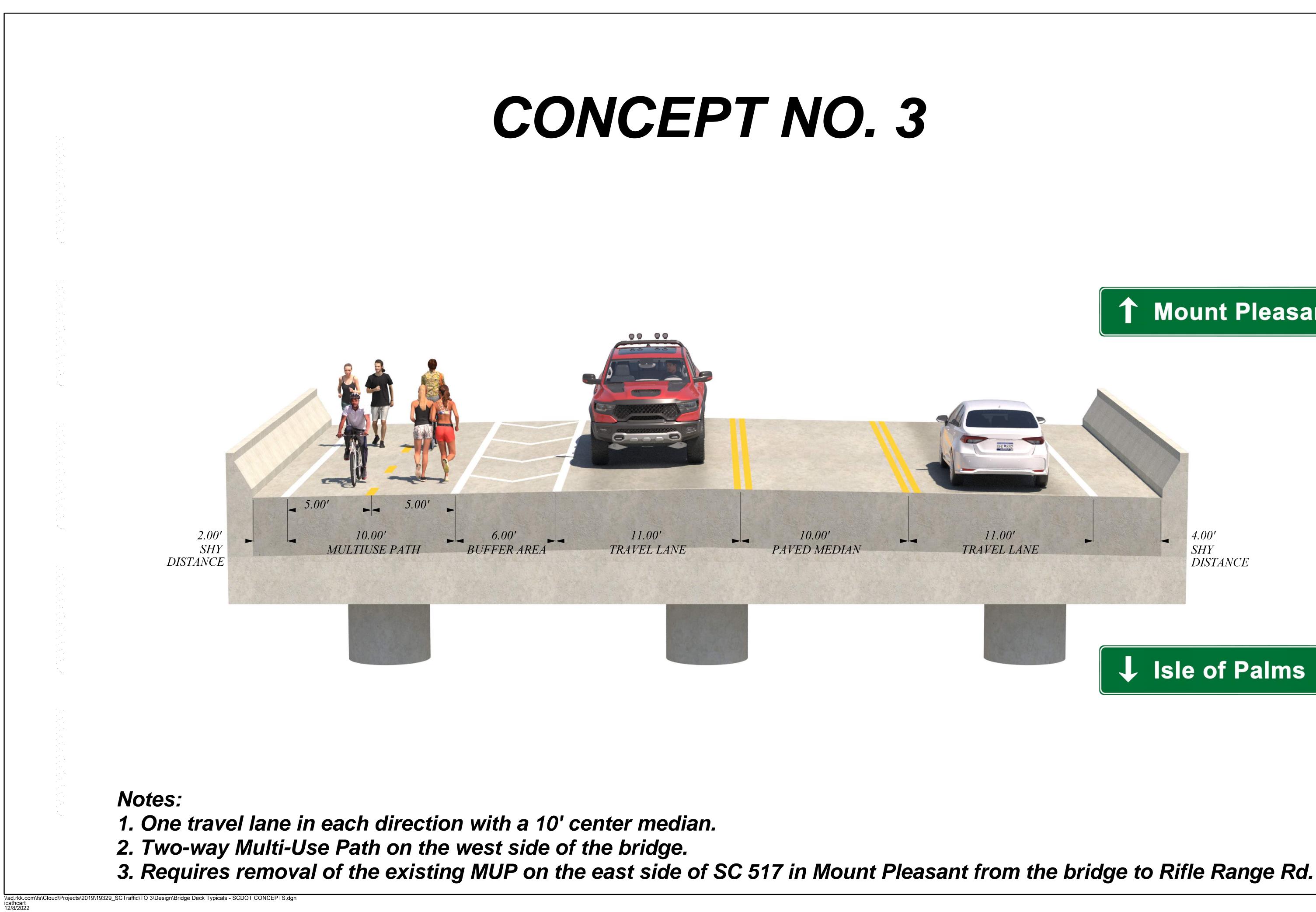
↓ Isle of Palms



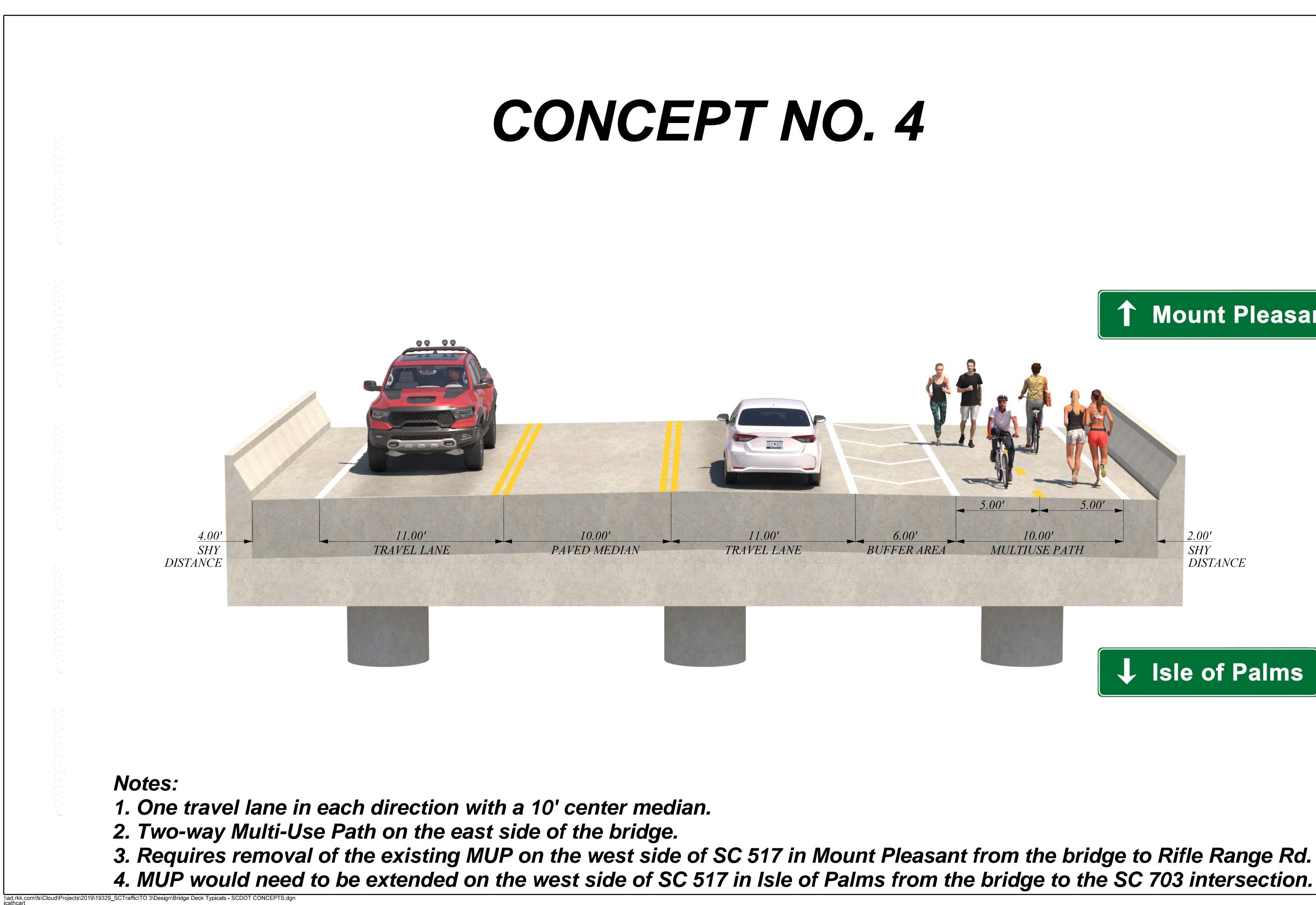
↓ Isle of Palms



Isle of Palms



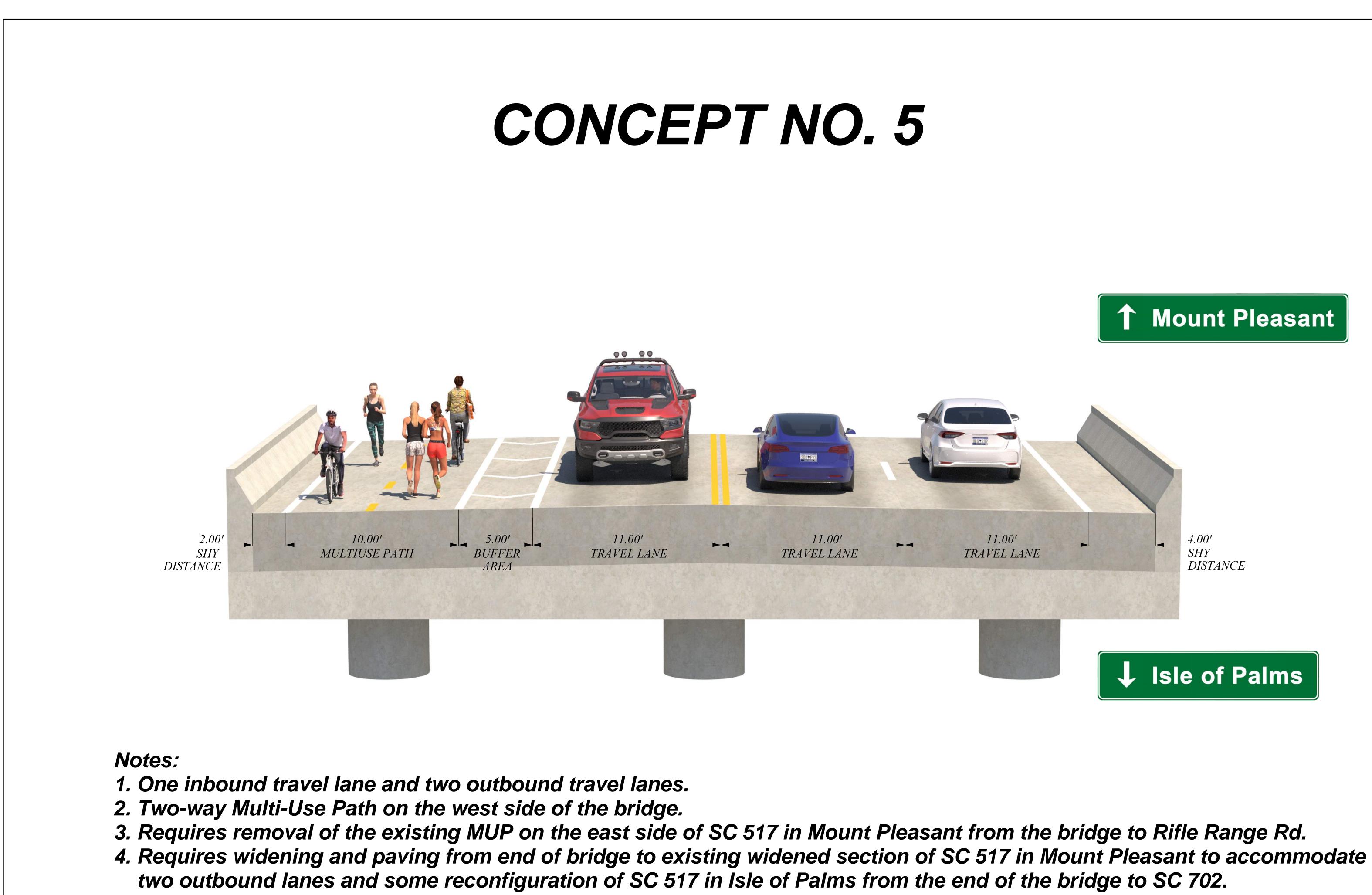
↓ Isle of Palms



icathcart 12/8/2022

Mount Pleasant

↓ Isle of Palms



ASSIGNMENT OF PARKING LEASE AND AGREEMENT

MARINA JOINT VENTURES, INCORPORATED, a South Carolina corporation ("<u>Assignor</u>") and THE CITY OF ISLE OF PALMS, a South Carolina municipal government organization ("<u>Assignee</u>") hereby enter into this ASSIGNMENT OF PARKING LEASE AND AGREEMENT (this "<u>Assignment</u>") as of the _____ day of December, 2022.

RECITALS:

WHEREAS, Assignor desires to transfer to Assignee and Assignee desires to assume from Assignor all of Assignor's right, title and interest in, to and under the Parking Lease and Agreement by and between Assignor, as landlord, and Marker116, LLC, a South Carolina limited liability company, as tenant, dated September 30, 2020, as amended by that certain First Amendment to Parking and Lease Agreement dated October 28, 2020, as amended by that certain Second Amendment to Parking and Lease Agreement dated March 5, 2021, and as amended and memorialized by that certain Memorandum of Understanding dated April 22, 2022 (collectively, the "Lease").

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) in hand paid to Assignor, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. <u>Assignment</u>. Assignor does hereby sell, transfer, assign and convey unto Assignee, and Assignee does hereby assume and accept, as of the date hereof, all of Assignor's right, title and interest in and to the Lease.

2. <u>Acceptance and Assumption</u>. Assignee hereby accepts the foregoing assignment of the Lease on the terms and conditions set forth in this Assignment and agrees to assume, fulfill, perform and discharge all the various liabilities, duties, covenants, obligations and agreements under or with respect to the Lease to the extent arising or accruing from and after the date hereof.

3. <u>Successors and Assigns</u>. This Assignment shall inure to the benefit of, and be binding upon, the successors, executors, administrators, legal representatives and assigns of the parties hereto.

4. <u>Governing Law</u>. This Assignment shall be construed under and enforced in accordance with the laws of the State of South Carolina without regard to conflict of law principles.

5. <u>Counterparts</u>. This Assignment may be executed in multiple counterparts which shall together constitute a single document. Electronic or pdf copies of signatures shall be deemed to be the equivalent of original signatures for purposes of this Assignment.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date first above written.

ASSIGNOR:

Marina Joint Ventures, Incorporated, a South Carolina corporation

By: _____

Name: Brian J. Berrigan Title: President

ASSIGNEE:

The City of Isle of Palms, a South Carolina municipal government organization

By:_____ Name:______ Title:_____

STATE OF SOUTH CAROLINA) COUNTY OF CHARLESTON)

PARKING LEASE AND AGREEMENT

This PARKING AND LEASE AGREEMENT (the "Agreement") made and entered into this 30th day of September, 2020 (the "Effective Date"), by and between MARINA JOINT VENTURES, INC., a South Carolina corporation (the "Landlord") and NO WAKE, LLC; a South Carolina limited liability company (the "Tenant"). Tenant and Landlord may be individually referred to herein as a "party" or together as the "parties."

WHEREAS, for the consideration provided for in this agreement, the Tenant desires to lease from Landlord a portion of the parking lot adjacent to the City of Isle of Palms Marina located at 50 41st Avenue, Isle of Palms, South Carolina (the "Premises") for parking for its employees and guests, on the terms and conditions set forth herein; now,

THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties, for themselves and their successors and assigns, agree as follows:

- Leased Premises. The Landlord hereby agrees to lease the exclusive use of no less than thirty (30) parking spaces to Tenant, with such parking spaces being located within the parking lot managed and controlled by Landlord and situated at the western end of the parking lot, which shall also be known and referred to as the "Private Parking Lot" as <u>shown on Exhibit A</u> (map of premises designating the parking lot referred to herein as the "Premises" and shall be shaded in yellow on Exhibit A). However, if the parking lot shown in Exhibit A yields greater than thirty (30) spaces, then Tenant shall not pay any additional rent, as the Rent obligation outlined in Section 5 of this Lease shall be fixed.
- Term. The spaces are to be used by Tenant for the purpose of parking no less than thirty (30) vehicles, whether such vehicles are owned by the managers, employees, customers or subcontractors of Tenant, as specified in this Agreement and subject to the conditions set forth herein for a period commencing on May 1, 2021 and terminating on January 31, 2045 (the "Term").
- 3. Landlord Warranty and Payment Conditions. The parties acknowledge that City of Isle of Palms (the "City") owns the real property on which the parking lot is located, and Landlord, as part of a separate lease agreement, maintains control over the shared parking areas at the City of Isle of Palms Marina. This Agreement is being entered into based on the authority provided by the City of Isle of Palms to Landlord, and Landlord's authority to grant exclusive use of the back portion of the parking lot to Tenant.

- 4. <u>Use of Parking Spaces and Leaseback</u>. "Spaces" or "parking spaces" as used in this Agreement shall mean the back lot as described above. Subject to the eight spaces reserved by Landlord (the "Reserved Spaces") in this Section, Tenant and Landlord hereby agree that Tenant shall have exclusive use of the parking spaces at all times (twenty-four hours per day), seven days per week. The Reserved Spaces shall be used by Landlord, at no additional cost to Landlord, for the purpose of parking vehicles owned by the employees of tenants at the Marina between the hours of 5:00 a.m. until 5:00 p.m. (the "Permitted Hours"). Landlord's consideration for use of the Reserved Spaces shall be the reduced rent charged to and paid by Tenant that is provided for in Section 5 of this Agreement. Tenant shall have the authority to designate which spaces within the Leased Premises shall be used as Reserved Spaces. Outside of the Permitted Hours, Tenant shall have the authority to utilize the Reserved Spaces seven (7) days a week, twenty-four (24) hours a day.
- 5. <u>Rent.</u> Beginning on May 1, 2021, Tenant hereby agrees to pay Landlord, as payment for the use of the parking spaces, the amounts outlined in the Annual Rent Schedule attached hereto as Exhibit "B" and incorporated by reference, with the first payment being due and owing on the first (1st) day of each calendar month during the term of this Agreement (collectively, the "Rent"). The Annual Rent Schedule attached hereto as Exhibit B shall show the total amount that shall be payable in each year of the Term, and payments shall be made in twelve (12) equal monthly installments. Beginning May 1, 2022, the rate will increase by two percent (2.0%) per lease year. In the event Tenant is able to utilize more than thirty (30) spaces by "double parking" cars via a valet service or other space optimization to fit more than thirty (30) cars at any given time, Tenant shall not be required to pay any additional monies to Landlord, as the rent described herein shall be fixed, subject to the two percent (2.0%) annual increase.
- 6. <u>Indemnification</u>. Tenant agrees to indemnify and hold Landlord harmless from any and all liability, damages, personal injury or other expenses arising out of or related to the use, negligence or purposeful acts happening on or within the parking spaces by Tenant, Tenant's employees, customers, agents, staff members, including any breach of this Agreement by Tenant. Landlord agrees to indemnify and hold Tenant, it's employees, managers, customers, agents, members and officers harmless from any and all liability, damages, personal injury or other expenses arising out of or related to the use, negligence, or purposeful acts happening on or within the parking spaces by Landlord's employees, agents, staff, assigns, or members of the general public that Landlord permits to utilize the Reserved Spaces.
- Insurance. Tenant shall secure and maintain general liability and property damage insurance for occurrences on the Premises arising out of its activities with limits of

coverage not less than Five Hundred Thousand Dollars (\$500,00.00) for property damage per occurrence, and One Million Dollars (\$1,000,000.00) for bodily injury to one person per occurrence. Such policy shall name Landlord as an additional insured. Before taking possession of the Premises and from time to time thereafter, before any policy expires, Tenant will deliver to the other party certificates of insurance evidencing the existence and amounts of these policies, together with a copy of the Declarations Page of the policy, the Schedule of Forms and Endorsements, and all endorsements required by this Agreement, including the endorsement naming Landlord as Additional Insured. Tenant will also obtain an endorsement in which the insurer agrees to give Landlord no less than thirty (30) days' notice of the cancellation or material modification of the policy, and will provide Landlord with a copy of this endorsement.

- 8. <u>Nature of Use by Tenant of Parking Spaces</u>. The Spaces are to be used by the Tenant solely for the purpose of parking vehicles owned by Tenant or vehicles that Tenant allows to park in the Spaces, whether such use is for Tenant's employees, contractors, members, officers or customers. Tenant agrees that the property will not be used for any unlawful purposes. Tenant may place signage, at their expense, delineating their spaces so long as the same is in compliance with the terms of Landlord's lease with the City and all applicable ordinances.
- 9. <u>Maintenance</u>. Tenant shall use reasonable diligence in the protection and care of the parking spaces during occupancy and will keep the parking spaces free from any debris caused by the use of the parking spaces by Tenant. Except for the Reserved Spaces, Tenant shall be responsible for repairing and maintaining the Leased Premises, including, without limitation filling any potholes, repairing or maintaining the structural components of the surface, including asphalt maintenance and filling.
- <u>As-is Conveyance</u>. Tenant hereby acknowledges and agrees that the parking spaces are being leased in "as is" condition and that Landlord has made no representation or warranties concerning premises other than its warranty that it has the legal authority to enter into this Agreement.
- 11. <u>Parking Enforcement</u>. Tenant shall be responsible for enforcing its rights in the assigned parking space. Should someone else park in the space that is not authorized pursuant to this Agreement, or should a member of the general public or Landlord (or any affiliate of Landlord) park in (i) any of the Tenant's designated spaces or (ii) in the Reserved Spaces outside of the Permitted Hours, Tenant shall have the authority to remove those vehicles.
- 12. <u>Assignment</u>. This lease agreement may be assigned by Tenant should Tenant sell, convey or transfer its interest in the entity serving as the tenant of the prospective lease

by and between Tenant and the City of Isle of Palms for the lease of the restaurant located within the marina vicinity (the "Restaurant Lease"), and any such transferee shall ascend to have all rights and obligations of Tenant provided for in this Agreement.

- <u>Conditions Precedent</u>. Either party's obligation to perform under this this Agreement is contingent upon the following conditions precedent:
 - a. Tenant executing the Restaurant Lease with the City of Isle of Palms by November 1, 2020. Should Tenant not enter into the Restaurant Lease, this Agreement shall be null and void and both parties shall be released from all liability regarding compliance with the terms herein. In addition, should the Restaurant Lease be terminated at any time during the Term, then this Agreement shall also be terminated, and upon delivery of notice by Tenant to Landlord of the termination of the Restaurant Lease, both parties shall be released from all liability regarding compliance with the terms herein.
 - Landlord obtaining the written consent of the City to sublease the Spaces pursuant to this Agreement.
- <u>Non-waiver</u>. No wavier or failure to act upon any breach by either party to this Agreement shall impair the other party's ability to enforce future breaches of the Agreement by the other party.
- 15. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the matters referred herein, integrates all terms and conditions mentioned or incidental to the Agreement, other than the reference to the Restaurant Lease.
- Binding Effect. This Lease shall be binding upon the Parties hereto, their heirs, successors and assigns.
- Enforcement. In any action necessary to enforce terms of this Lease, the prevailing party shall be entitled to payment of its attorney's fees and costs from the nonprevailing party or parties at all trial and appellate levels.
- Applicable Law. This Agreement shall be construed and governed by the laws of the State of South Carolina.
- <u>Construction</u>. This Agreement shall not be construed against any party but shall be construed equally as to each party hereto.
- 20. <u>Representation Acknowledgement</u>. The Tenant and Landlord, by their signature below, hereby acknowledges reading and fully understanding this agreement. This Agreement has been prepared by the law firm of Buxton & Collie, LLC on behalf of

Tenant, and Landlord hereby acknowledges that they have had the opportunity to seek independent legal counsel regarding the terms and conditions outlined herein.

 BINDING AGREEMENT: This Agreement shall be binding upon and inure to the benefit of Tenant and Landlord, and their respective successors and assigns.

[Signatures on following page]

SIGNED, SEALED AND DELIVERED THIS 30th day of September, 2020.

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LANDLORD:	MARINA
Saper Abore	AS
Witness	Brian Berri
Mary to Seer	
Witness	
- / 0	

OINT VENTURES, INC. gan, President

STATE OF SOUTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF CHARLESTON

I, <u>Amanda C. Thompson</u>, Notary Public for the State of South Carolina, do hereby certify that Brian Berrigan, Owner of Marina Joint Ventures, Inc. personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

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SUBSCRIBED TO AND SWORN before me this ______ day of September, 2020.

Manda (Mompson (SEAL) Notary Public for South Carolina

My Commission Expires: 3/16/2030

TEN	ANT:				
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COUNTY OF CHARLESTON

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HOLD

David Lorenz

Jonathan Bushnell

ACKNOWLEDGMENT

I, Harriche Calder, Notary Public for the State of South Carolina, do hereby certify that David Lorenz and Jon Bushnell on behalf of Manacella, UC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

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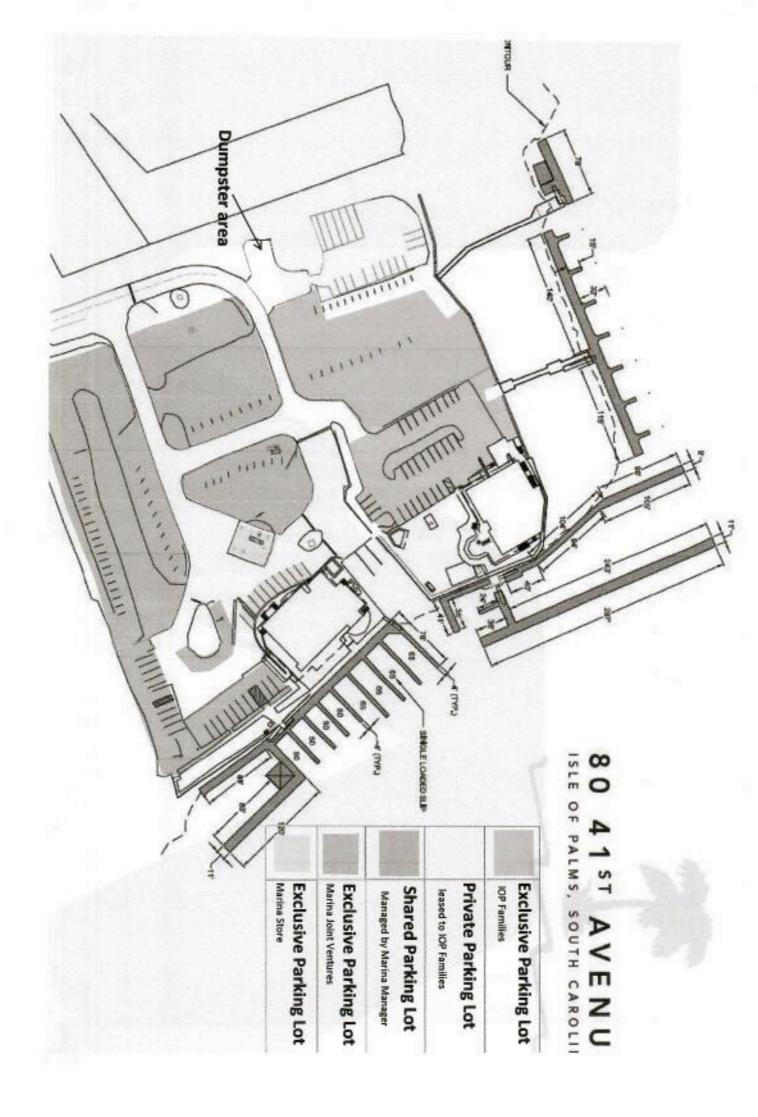
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day of September, 2020. SUBSCRIBED TO AND SWORN before me this Summer BUGYAR Notary Public for South Carolina My Commission Expires: 12012,2025 z١ LEB. [Signature page to Parking Lease and Agreement hetwear warina Joint Ventures, Inc. and MArker 116, LLC

EXHIBIT A:



EXHIBIT B, Annual Rent Table:



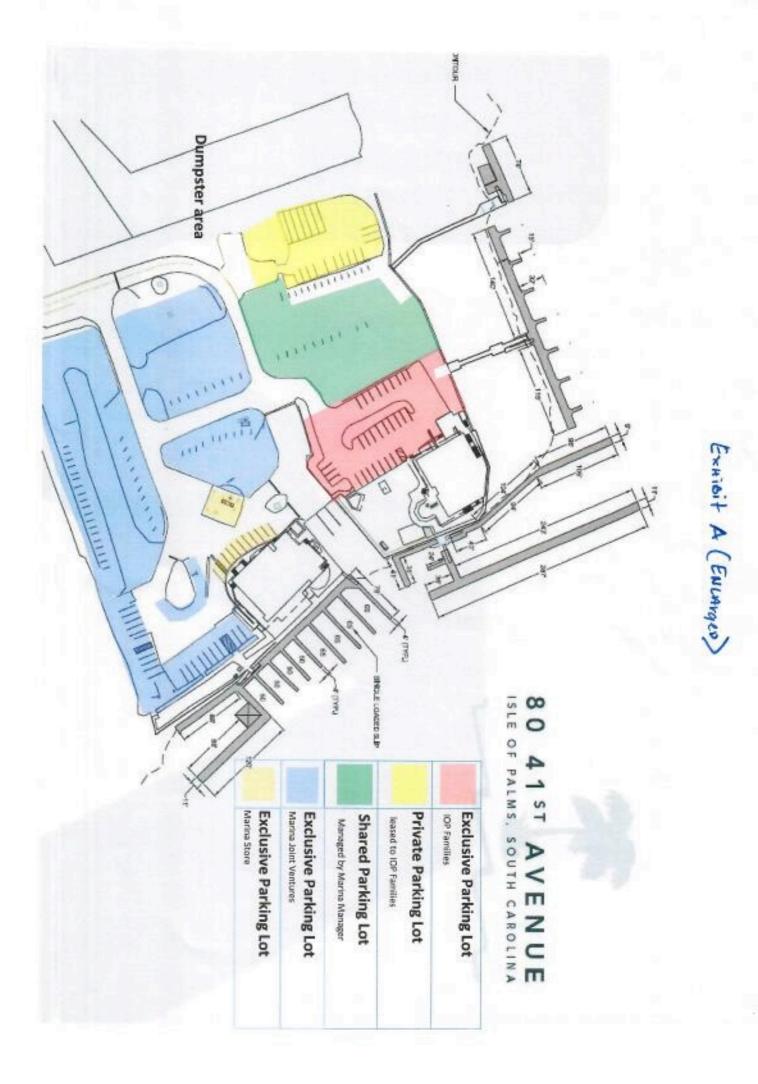


EXHIBIT B, Annual Rent Table:

Year	Restaurant MJV 8 Portion Spaces		Annual Total Payment	
5/1/21 - 4/30/22	\$ 22,500	\$ (4,800)	\$ 17,700	
5/1/22 - 4/30/23	\$ 22,950	\$ (4,896)	\$ 18,054	
5/1/23 - 4/30/24	\$ 23,409	\$ (4,994)	\$ 18,415	
5/1/24 - 4/30/25	\$ 23,877	\$ (5,094)	\$ 18,783	
5/1/25 - 4/30/26	\$ 24,355	\$ (5,196)	\$ 19,159	
5/1/26 - 4/30/27	\$ 24,842	\$ (5,300)	\$ 19,542	
5/1/27 - 4/30/28	\$ 25,339	\$ (5,406)	\$ 19,933	
5/1/28 - 4/30/29	\$ 25,845	\$ (5,514)	\$ 20,332	
5/1/29 - 4/30/30	\$ 26,362	\$ (5,624)	\$ 20,738	
5/1/30 - 4/30/31	\$ 26,890	\$ (5,736)	\$ 21,153	
5/1/31 - 4/30/32	\$ 27,427	\$ (5,851)	\$ 21,576	
5/1/32 - 4/30/33	\$ 27,976	\$ (5,968)	\$ 22,008	
5/1/33 - 4/30/34	\$ 28,535	\$ (6,088)	\$ 22,448	
5/1/34 - 4/30/35	\$ 29,106	\$ (6,209)	\$ 22,897	
5/1/35 - 4/30/36	\$ 29,688	\$ (6,333)	\$ 23,355	
5/1/36 - 4/30/37	\$ 30,282	\$ (6,460)	\$ 23,822	
5/1/37 - 4/30/38	\$ 30,888	\$ (6,589)	\$ 24,298	
5/1/38 - 4/30/39	\$ 31,505	\$ (6,721)	\$ 24,784	
5/1/39 - 4/30/40	\$ 32,136	\$ (6,856)	\$ 25,280	
5/1/40 - 4/30/41	\$ 32,778	\$ (6,993)	\$ 25,786	
5/1/41 - 4/30/42	\$ 33,434	\$ (7,133)	\$ 26,301	
5/1/42 - 4/30/43	\$ 34,102	\$ (7,275)	\$ 26,827	
5/1/43 - 4/30/44	\$ 34,785	\$ (7,421)	\$ 27,364	
5/1/44 - 12/31/44*	\$ 23,653	\$ (5,046)	\$ 18,607	
Total	\$ 672,665	\$ (143,502)	\$ 529,163	

*8 Months

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FIRST AMENDMENT TO PARKING AND LEASE AGREEMENT

This FIRST AMENDMENT TO PARKING AND LEASE AGREEMENT (this "Agreement") is made and entered into this _____ day of October, 2020 (the "Effective Date"), by and between MARINA JOINT VENTURES, INC., a South Carolina corporation (the "Landlord") and MARKER116, LLC, a South Carolina limited liability company (the "Tenant").

WHEREAS, Landlord and Tenant entered into that certain Parking and Lease Agreement, dated September 30, 2020 (the "Lease"), under which Tenant leases a portion of the parking lot adjacent to the City of Isle of Palms Marina located at 50 41st Avenue, Isle of Palms, South Carolina (the "Premises") for parking for its employees and guests, known and referred to as the "Private Parking Lot" as shown on Exhibit A and shaded in yellow; and

WHEREAS, Landlord and Tenant wish to amend the Lease as it relates to a different portion of the parking lot adjacent to the City of Isle of Palms Marina located at 50 41st Avenue, Isle of Palms, South Carolina, which shall be known and referred to as the "Shared Parking Lot" as shown on Exhibit A and shaded in green, the amendment to which shall be more particularly provided for herein.

THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties, for themselves and their successors and assigns, agree as follows:

1. <u>Shared Parking Lot</u>. The Shared Parking Lot shall be a Common Area and may be used by Tenant, other tenants of the Marina, and the patrons, employees, agents, customers, contractors, licensees and invitees of Tenant and the other Tenants of the Marina. All parking spaces in the Shared Parking Lot shall be used and operated on an unreserved, self-park basis. All parking spaces in the Shared Parking Lot shall be free of charge to Tenant and Tenant's patrons, and customers, after 8:00 p.m. until 5:00 a.m., seven (7) days a week, and under no circumstances shall Tenant or Tenant's patrons, and customers be required to remit payment through any type of metering or payment service or system during such time periods. At any time during the Term, all signage in the shared parking spaces in the Shared Parking Lot must have the mutual approval of such signage by Tenant and the Marina Manager; provided, however, that the design, construction and installation of such signage shall be at the sole cost and expense of Tenant and the other Tenants of the Marina entitled to use the Shared Parking Lot.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and

SECOND AMENDMENT TO PARKING AND LEASE AGREEMENT

This SECOND AMENDMENT TO PARKING AND LEASE AGREEMENT (this "Agreement") is made and entered into this <u>31</u> day of March, 2021 (the "Effective Date"), by and between MARINA JOINT VENTURES, INC., a South Carolina corporation (the "Landlord") and MARKER116, LLC, a South Carolina limited liability company (the "Tenant").

WHEREAS, Landlord and Tenant entered into that certain Parking and Lease Agreement, dated September 30, 2020 (the "Lease"), and a First Amendment to Parking and Lease Agreement (the "First Amendment"), dated October 28, 2020, wherein Tenant leases a portion of the parking lot adjacent to the City of Isle of Palms Marina located at 50 41st Avenue, Isle of Palms, South Carolina (the "Premises") for parking for its employees and guests;

A. WHEREAS, Landlord and Tenant wish to ratify the Parking and Lease Agreement, dated September 30, 2020, and the First Amendment to Parking and Lease Agreement, dated October 28, 2020, and further amend pursuant to the terms stated herein. However, unless explicitly modified by this Second Amendment, all provisions of the Lease and First Amendment shall remain in full force and effect.

THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties, for themselves and their successors and assigns, agree as follows:

- A. The Lease and all amendments thereto are hereby ratified, in full force and effect, that the Restaurant Lease (as defined in the Lease has been entered into by Tenant) and the parties to this Agreement do hereby waive any termination resulting from the date of execution of the Restaurant Lease by ratifying this Second Amendment to confirm the existence of the Lease and all amendments thereto; and
- B. The parties do hereby confirm that the tenant is MARKER116, LLC; and
- C. Paragraph 4 of the Lease shall be replaced with the following (emphasis added to the amended portion).

4. <u>Use of Parking Spaces and Leaseback</u>. "Spaces" or "parking spaces" as used in this Agreement shall mean the back lot as described above. Subject to the eight spaces reserved by Landlord (the "Reserved Spaces") in this Section, Tenant and Landlord hereby agree that Tenant shall have exclusive use of the parking spaces at all times (twenty-four hours per day), seven days per week. The Reserved Spaces shall be used by Landlord, at no additional cost to Landlord, for the purpose of parking vehicles owned by the employees of tenants at the Marina between the hours of 5:00 a.m. until 7:00 p.m. (the "Permitted Hours"). Landlord's consideration for use of the Reserved Spaces shall be the reduced rent charged to and paid by Tenant that is provided for in Section 5 of this Agreement. Tenant shall have the authority to designate which spaces within the Leased Premises shall be used as Reserved Spaces. Outside of the Permitted Hours, Tenant shall

have the authority to utilize the Reserved Spaces seven (7) days a week, twenty-four (24)

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

LANDLORD:

MARINA JOINT VENTURES, INC.

By: Name: Date:

Brian Berrigan, President 21 4 11

TENANT:

MARKER116, LLC

By: Name: Date:

David Lorenz, Member 4/2/ 121

By: Name: Date:

mente Jonathan Bushnell, Member 4/2/21